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Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Mr. Miloon Kothari

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Executive summary

In the first report submitted by the Special Rapporteur to the Commission on Human Rights (E/CN.4/2001/51), he called for a broad interpretation of the right to adequate housing as contained in international legal instruments, keeping in view the indivisibility and interrelatedness of all human rights. The report included a review of international legal instruments on the right to adequate housing, and highlighted a decade of standard-setting work by the United Nations human rights mechanisms. In setting out the framework for his work, the Special Rapporteur called for the examination of a range of issues related to adequate housing, including gender discrimination, land, access to potable water, issues of economic globalization and its compatibility with human rights and particularly its impact on housing, the international cooperation dimension; forced evictions and poverty, and global social policies and their interface with human rights.

In this second report to the Commission, the Special Rapporteur reports on various activities undertaken since the first report pursuant to resolutions adopted by the Commission at its fifty-seventh session. The Special Rapporteur made considerable efforts to contribute to a number of global conference reviews and new initiatives during 2001 to draw attention to the issue of adequate housing. He actively contributed to the Third United Nations Conference on the Least Developed Countries, the special session of the General Assembly for an overall review and appraisal of the Habitat Agenda (Istanbul +5), the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, and the preparatory process for the International Conference on Financing for Development.

From the analysis of the outcomes of these conferences, and keeping in mind the situation of the poor and the vulnerable in regard to their increasingly inadequate and insecure housing and living conditions around the world, the Special Rapporteur emphasizes the urgent need to move beyond reaffirmation of principles and commitments towards adopting concrete steps for the progressive realization and operationalization of housing rights. The report outlines the nature of governmental obligations, both in terms of progressive realization and those obligations of immediate effect, such as provision for non-discrimination and prevention of forced eviction. The "solidarity" and "fraternity" dimensions of international cooperation are important aspects of State obligations under international human rights law, in particular the International Covenant on Economic, Social and Cultural Rights, that need more recognition.

This report has two thematic focuses: one is discrimination and segregation in the context of follow-up to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, and the other is the impact of globalization on the realization of housing rights. The realization of housing rights in an environment free from racial discrimination will have a direct bearing on other congruent human rights. In today's context of globalization and the free market economy, there is a trend towards greater competition and market efficiency, which often results in increased marginalization of the poor. The report examines in particular the effects of privatization of water services in cases where it has negatively affected the poor. The report concludes that unfettered globalization cannot bring

about the fulfilment of economic, social and cultural rights, including the right to adequate housing. Governments have an important role to play in reconciling macroeconomic policies with social objectives and meeting the needs of the most vulnerable first, keeping in mind the primacy of human rights obligations.

For the next report, the Special Rapporteur proposes to focus on two issues: women and land and housing rights, and forced evictions and other forms of displacement. Such thematic focuses will form the backbone of his approach and further activities and have already been applied in his first country mission to Romania in January 2002. During the course of the year, the Special Rapporteur plans to undertake missions to Mexico and Kenya. The Special Rapporteur also had an opportunity to visit the Occupied Palestinian Territories, and availed himself of that opportunity to collect information pursuant to Commission resolution S-5/1.

The Special Rapporteur has been engaged in active dialogues with Governments and members of the civil society, through responses received to his questionnaires and on a number of allegations received concerning forced evictions. The Special Rapporteur also reports progress in ongoing dialogues with the treaty bodies, particularly the Committee on Economic, Social and Cultural Rights and the Committee on the Rights of the Child. Both committees adopted statements, to Istanbul +5 in support of the right to adequate housing and endorsing the Special Rapporteur's approach as presented in his first report. The Special Rapporteur also acknowledges with appreciation a number of United Nations organizations, and bodies and civil society groups, that have supported his mandate and activities.

The report concludes with a number of recommendations. He recommends that the Commission: (a) allow him to further contribute to global conference reviews; (b) request the Committee on Elimination of Racial Discrimination to adopt a general comment on housing and discrimination; (c) authorize further research and the organization of expert seminar on non-discriminatory access to housing, land and related services; (d) approve his intention to focus on women's rights in view of Commission resolution 2001/34; (e) call for the convening of regional dialogues with Governments and the civil society; (f) encourage implementation of the UN-Habitat/OHCHR housing rights programme; and (g) request the Special Rapporteur to report to the General Assembly.

Introduction

1. By its resolution 2000/9 of 17 April 2000, the Commission on Human Rights appointed, for a period of three years, a special rapporteur whose mandate will focus on adequate housing as a component of the right to an adequate standard of living, as reflected in article 25, paragraph 1, of the Universal Declaration of Human Rights, article 11, paragraph 1, of the International Covenant on Economic, Social and Cultural Rights, and article 27, paragraph 3, of the Convention on the Rights of the Child, and on the right to non-discrimination as reflected in article 14, paragraph 2 (h), of the Convention on the Elimination of All Forms of Discrimination against Women, and article 5 (e) of the International Convention on the Elimination of All Forms of Racial Discrimination. The Commission further requested him: (a) to report on the status, throughout the world, of the realization of the rights that are relevant to the mandate; (b) to promote, as appropriate, cooperation among and assistance to Governments in their efforts to secure these rights; (c) to apply a gender perspective; (d) to develop a regular dialogue and to discuss possible areas of collaboration with Governments, relevant United Nations bodies, specialized agencies, international organizations in the field of housing rights, inter alia the United Nations Centre for Human Settlements (UNCHS/Habitat),* non-governmental organizations and international financial institutions, and to make recommendations on the realization of the relevant rights; (e) to identify possible types and sources of financing for relevant advisory services and technical cooperation; (f) to facilitate, where appropriate, the inclusion of issues relating to relevant United Nations missions, field presences and national offices; and (g) to submit to the Commission on Human Rights an annual report covering the activities relating to the mandate.

2. The Special Rapporteur submitted his first report (E/CN.4/2001/51) to the Commission at its fifty-seventh session, in which he called for a broad interpretation of the right to adequate housing. The report included a review of international legal instruments on the right to adequate housing, highlighted some of the significant impediments to realizing the right to adequate housing and suggested priority issues that needed to be addressed by the international community, including: gender discrimination; land; access to potable water; issues of economic globalization and its compatibility with human rights, and particularly its impact on housing; the international cooperation dimension; forced evictions and poverty; and global social policies and their interface with human rights.

3. At its fifty-seventh session, the Commission adopted by consensus resolution 2001/28, in which it encouraged the Special Rapporteur: (a) to bring the issue of adequate housing to the attention of relevant review processes of United Nations conferences and summits, notably the five-year review of the Habitat Agenda in June 2001; (b) to strengthen the integration of the rights relevant to his mandate into the Global Campaign for Secure Tenure launched by the UNCHS/Habitat and into other operational activities of the United Nations system, notably into processes and initiatives that are oriented towards poverty reduction, and to develop to this effect a dialogue with Governments, relevant United Nations bodies, in particular UNCHS/Habitat and the Office of the United Nations High Commissioner for Refugees (UNHCR), specialized agencies, international organizations, non-governmental organizations and international financial

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* Effective 1 January 2002, UNCHS/Habitat became the United Nations Human Settlements Programme (UN-Habitat). See paragraph 94 below.

institutions; and (c) to cooperate, in accordance with his mandate, with other rapporteurs, representatives, experts, notably the independent expert on the question of human rights and extreme poverty, members and chairpersons of working groups of the Commission, and United Nations bodies, including human rights treaty bodies.

4. The resolution further requested the Special Rapporteur, in the fulfilment of his mandate: (a) to give particular emphasis to practical solutions with regard to the implementation of the rights relevant to his mandate, on the basis of pertinent information, notably on best practices, including on domestic legal enforcement of these rights, from Governments, relevant United Nations agencies and non-governmental organizations; (b) to facilitate the provision of technical assistance; and (c) to review the interrelatedness of adequate housing as a component of the right to an adequate standard of living with other human rights.

5. This report, submitted in accordance with the above resolutions, outlines activities undertaken by the Special Rapporteur since the last report and highlights significant developments in the realization of rights related to his mandate. The Special Rapporteur is grateful to those Governments, United Nations and other international bodies, non-governmental organizations and civil society groups which supported his mandate, as well as individual experts[1] who contributed information and analysis. Particular gratitude is acknowledged for the essential support provided by the Office of the High Commissioner for Human Rights (OHCHR) and the United Nations Human Settlements Programme (UN-Habitat) which enabled the Special Rapporteur to fulfil his mandate.

6. A dedicated web page on housing rights will become available on the OHCHR web site (address: http://www.unhchr.ch/housing) by March 2002, with comprehensive links to United Nations documents and resolutions as well as other information materials on housing rights.

I. FROM THE RECOGNITION TO THE OPERATIONALIZATION OF HOUSING RIGHTS

A. The issue of adequate housing in global conference reviews

7. The year 2001 witnessed a culmination of review processes stemming from several global conferences of the 1990s. Pursuant to the directives of the Commission, the Special Rapporteur spent considerable time and effort during the reporting period to follow and contribute to these conference reviews from the perspectives of his mandate. These global conference reviews presented significant opportunities to raise awareness of the issues related to adequate housing, recognize the human rights imperatives of improving living conditions for the poor, and galvanize international cooperation.

1. Third United Nations Conference on the Least Developed Countries

8. The Special Rapporteur submitted a statement to the Third United Nations Conference on the Least Developed Countries (LDC-III), held in Brussels from 14 to 20 May 2001. The issue of adequate housing was recognized in the last Programme of Action for LDCs adopted in Paris in 1990, as an important component in improving the living conditions and productive capacities

of the people in LDCs.[2] Despite this recognition, the Special Rapporteur was deeply concerned that the draft Programme of Action for the Decade 2001-2010[3] contained no recognition to the crucial issues of housing and living conditions. In his statement, the Special Rapporteur called upon all States to recognize the provisions under international human rights instruments on adequate housing and the need for continued improvement of living conditions in the new Programme of Action, which will serve as a main reference point for the development of LDCs in the coming decade. In the current context of economic globalization, LDCs needed to stress the obligations they have towards their citizens under international human rights instruments such as the International Covenant on Economic, Social and Cultural Rights in countering external pressures such as iniquitous debt, adjustment, trade, investment and finance agreements that might have negative impact on their ability to fulfil their obligations. In his statement, the Special Rapporteur further stated that the protection of women, children and vulnerable people and communities must form the foremost imperative in all conclusions emerging from the Conference.

9. The Special Rapporteur is pleased to note that, in the final outcome, the Programme of Action recognized the issue of housing and human settlements and defined the actions by LDCs and development partners as to "giving adequate priority to issues of housing and sustainable human settlements in rural areas and urban locations with a concentration of the poor".[4] Significantly, the Programme of Action recognized the need for respecting all internationally recognized human rights, and the "ethical imperative for the international community to adopt international support measures to help LDCs to arrest and reverse their marginalization and to promote their expeditious integration into the world economy and to fight social exclusion".[5]

2. Special session of the General Assembly for an overall review and appraisal of the implementation of the Habitat Agenda

10. One of the most important global events in the field of housing rights since the last session of the Commission was the special session of the General Assembly for an overall review and appraisal of the implementation of the Habitat Agenda, convened in New York from 6 to 8 June 2001 ("Istanbul +5"). The Special Rapporteur, encouraged by Commission resolution 2001/28, participated actively in the special session and its preparatory process in order to bring to the attention of Governments the human rights dimension of adequate housing and human settlements. The Special Rapporteur also participated in the panel discussion on the right to adequate housing and the parallel event on strategies for realizing women's right to land and property.[6]

11. As outlined in the first report of the Special Rapporteur, the Istanbul Declaration and the Habitat Agenda (A/CONF.147/18) adopted at Habitat II in 1996 is a strong human rights document which forms a basis for further national and international actions towards progressive realization of the right to adequate housing. In paragraph 39 of the Habitat Agenda, Governments reaffirmed their commitments to "full and progressive realization of the right to adequate housing as provided for in international instruments", and in this context, recognized "an obligation by Governments to enable people to obtain shelter and to protect and improve

dwellings and neighbourhoods".[7] Indeed, 33 out of 241 paragraphs of the Habitat Agenda address human rights issues, in language firmly grounded in international human rights instruments, and elaborate various aspects of and actions needed for the progressive realization of the right to adequate housing.

12. In his statement to the special session, the Special Rapporteur emphasized that, as Governments assembled to conduct an overall review and appraisal of the implementation of the Habitat Agenda, it was of utmost importance that they recommit themselves to the human rights principles and instruments and the language of rights contained in the Habitat Agenda. The Special Rapporteur was deeply concerned that, during the preparatory process leading to the special session, clauses related to the right to adequate housing had been removed from the draft Declaration on Cities and Other Human Settlements in the New Millennium.[8] The statements of the Committee on Economic, Social and Cultural Rights, the Committee on the Rights of the Child and the High Commissioner for Human Rights also called for the recognition of the right and supported the approach of the Special Rapporteur.[9]

13. The final Declaration on Cities and Other Human Settlements in the New Millennium, adopted by the special session on 9 June 2001,[10] reaffirmed the previous commitments made in the Habitat Agenda (paras. 5 and 6), and welcomed the mandate of the Special Rapporteur (para. 8). The Declaration, however, fell short of making specific references to human rights instruments, and in particular of expressly reaffirming the right to adequate housing. Notwithstanding this, a major step forward was the recognition of women's right to inheritance and the ownership of land and other property, credit, natural resources and appropriate technologies, as well as ensuring their right to security of tenure and to enter into contractual agreements, as contained in paragraph 44.

14. In the final analysis, while the Declaration adopted at the special session does not in any way weaken the already agreed commitments on and recognition of the right to adequate housing in the Habitat Agenda, it could have gone further by highlighting the progress that has been made - and enormous challenges that are yet to be addressed - in the field of housing rights. This makes all the more urgent the task entrusted to the Special Rapporteur to promote dialogue and cooperation towards the realization of rights related to his mandate. In particular, more efforts should be made to promote better understanding and closer coordination between two agencies concerned in promoting housing rights - OHCHR and UN-Habitat. Furthermore, it is essential that Governments have a clear understanding of the nature and principles of the right to adequate housing, particularly with regard to governmental obligations towards progressive realization of the right. Expanding on the analysis presented in his last report, the Special Rapporteur will recapitulate the nature of State obligations in section I.B and I.C of this report.

3. International Conference on Financing for Development

15. The International Conference on Financing for Development, which was originally scheduled for 2001, will take place in Monterrey, Mexico, from 18 to 23 March 2002. After following closely the preparatory processes leading to Monterrey and reviewing the draft outcome documents, the Special Rapporteur transmitted a written statement to the resumed third session of Preparatory Committee held in New York in October 2001, in order to highlight the critical human rights dimensions of housing that need urgent attention, financially and otherwise,

from the international community. The statement highlighted the need for Governments to increase their attention to the financing needs of the poor in housing and related services in fulfilling their obligations to meet the minimum core standards set out in international human rights instruments, and to support innovative approaches involving a range of programmes for micro-finance and partnerships with local communities, including the institutionalization of participatory budget processes. The statement also called attention to obligations on States emerging from the international legal provisions on international cooperation which are especially critical given the current reality of growing income disparities in the globalizing economy. Furthermore, the Special Rapporteur urged the Conference to devote, as its central concern, attention to the specific financing requirements to meet the needs of women and of children so as to ensure their ability to gain and retain the right to adequate housing. Finally, the Special Rapporteur called upon the international community to address the issue of policy coherence and renewed commitment to international cooperation, which is discussed in detail in section I.D of this report.

4. Special session of the General Assembly on children

16. The Special Rapporteur observed the third substantive session of the Preparatory Committee for the special session of the General Assembly on children in June 2001, and participated in parallel events organized during the session. As of June 2001, the draft plan of action[11] included two important paragraphs related to housing. Paragraph 24 stated: "A number of environmental problems and trends, such as global warming, ozone layer depletion, air pollution, hazardous wastes, exposure to chemicals and pesticides, inadequate sanitation, poor hygiene, unsafe drinking water and food and inadequate housing, need to be addressed to ensure the health and well-being of children." Paragraph 25 further stated: "Adequate housing fosters family integration, contributes to social equity and strengthens the feeling of belonging, security and human solidarity, which are essential for the well-being of children. Accordingly, we will attach a high priority to overcoming the housing shortage and other infrastructure needs, particularly for children in marginalized peri-urban and remote rural areas."

17. The Special Rapporteur is of the view that these provisions in the current draft document reinforces the notion of indivisibility of rights related to housing, which would include health, a safe environment and drinking water, which have been emphasized in his reports and in the work of the United Nations human rights mechanisms. Furthermore, they highlight the critical issue of the social impact of adequate housing on the well-being of children, and the need for priority attention to the situation of marginalized and vulnerable children. However, these provisions relating to adequate housing for children must be placed within the framework of the Convention on the Rights of the Child and other legal provisions of international human rights instruments. As the Committee on the Rights of the Child mentioned in its statement to Habitat II in 1996[12] and reiterated in its statement to Istanbul +5,[13] even prior to the adoption of the Convention in 1989, the right to adequate housing was already recognized for children by the League of Nations, in 1924.[14] The Declaration on the Rights of the Child, adopted by the General Assembly in 1959, stated that the child "shall have the right to adequate nutrition, housing, recreation and medical services".[15]

18. The Special Rapporteur commends the work of the Preparatory Committee, and hopes that these provisions will remain intact and be further strengthened at the special session which will be held in May 2002. The Special Rapporteur, encouraged by the Commission, stands ready to contribute further to the special session and its follow-ups.

19. The Special Rapporteur will follow up and monitor the implementation of all the Conference declarations and plans of action as they relate to his mandate. He will also continue to contribute to forthcoming Conference reviews, in particular to the Children's Summit and the World Summit on Sustainable Development (WSSD). The Special Rapporteur is of the view that the link between the realization of the right to adequate housing and access to a safe environment (including potable water) and natural resources is a critical aspect of his mandate. He will attempt to present case studies and other information to WSSD and will develop this essential aspect of the right to housing in his subsequent report to the Commission and in his country mission work.

B. Adequate housing as a distinct human right

20. In his first report to the Commission, the Special Rapporteur recalled that the right to adequate housing has received universal recognition since the adoption of the Universal Declaration on Human Rights in 1948, and has been reaffirmed and reinforced within many international human rights texts and numerous international declaratory and policy-oriented instruments.[16] Among them, the key text containing the right to adequate housing is the International Covenant on Economic, Social and Cultural Rights. Article 11.1 of the Covenant reads:

> "The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent."

21. Over the past decade, extensive interpretive work by the Committee on Economic, Social and Cultural Rights, particularly its General Comments No. 4 on the right to adequate housing and No. 7 on forced eviction, as well as the work of the Special Rapporteur on the realization of the right to adequate housing of the Sub-Commission on Prevention of Discrimination and Protection of Minorities and numerous resolutions of the Commission on Human Rights,[17] confirmed the status of the right to adequate housing as a distinct human right. The Special Rapporteur recalls the expert group meeting on the human right to adequate housing, organized jointly by the UNCHS/Habitat and the United Nations Centre for Human Rights in 1996 pursuant to Commission on Human Settlement resolution 15/2, which made the following conclusions with regard to the existence of the right to adequate housing:

> "(a) The formulation 'right to housing' is used clearly and unambiguously in the International Convention on the Elimination of All Forms of Racial Discrimination which is binding on close to 150 States parties;

"(b) The view that while there is a right to an adequate standard of living there is no separate right to adequate housing has, to the knowledge of the experts, never previously been made in any United Nations forum either in relation to this right or to the right to adequate food or the right to adequate clothing, the status of which would be equally affected;

"(c) No State party to the relevant Covenant has ever disputed the consistent use by the Committee on Economic, Social and Cultural Rights of the terminology according to which the right to adequate housing has always been treated as a separate and distinct right;

"(d) The wording used in the relevant Covenant would, according to accepted canons of interpretation, result in the logical conclusion that the right to adequate housing exists, whether as part of a broader 'umbrella' right or separately; in either case it is necessary to treat the right as having a distinct existence."[18]

22. Globally, more than 50 countries have adopted or amended national constitutions to include elements that address the right to adequate housing, many of which contain explicit guarantees to the right to adequate housing. The establishment within State constitutions, of both individual and family rights to adequate housing and the corresponding series of State obligations to create the legal, social and economic conditions necessary for the exercise by all of this right constitute important legal foundations for further judicial and other actions geared towards ensuring this right and making it justiciable. As a result judges are being increasingly called upon to play a role in the implementation of housing rights, and the growing body of housing rights case law is evidence of this important development. The recent initiative of UN-Habitat to compile a casebook on housing rights laws and jurisprudence in collaboration with OHCHR should contribute to the better understanding and reaffirmation of the legal status of housing rights in the national and regional contexts.

23. At the workshop for judges on the justiciability of economic, social and cultural rights in South Asia organized by OHCHR and the International Commission on Jurists in New Delhi from 17 to 19 November 2001, in which the Special Rapporteur participated, a number of cases were presented where national courts had relied upon international standards and norms when deciding cases related to economic, social and cultural rights. Judges who participated in the workshop unanimously agreed that the right to adequate housing is a justiciable right. It was emphasized, however, that justiciability was not the only issue at stake concerning housing rights. The question of enforceability and adequate remedies is also crucial to the realization of housing rights. The workshop agreed that judges should be urged to: (a) protect the vulnerable from homelessness due to arbitrary and discriminatory action; (b) ensure the right to adequate housing of the people, including the non-discriminatory provision of civic services, and ensure that there is no retrogression of laws and policies protecting the right to housing; (c) ensure that no forced evictions are conducted, except in exceptional cases on satisfying certain mandatory conditions, such as consultation with the persons who would be affected, reasonable notice, hearings prior to eviction, opportunity for legal redress, and provision of the right to adequate housing in an alternative location. The workshop recognized that the effectiveness of the protection of the right to housing had in some cases been challenged by global policies.[19]

C. Clarifying the obligations of States

24. Notwithstanding the wide legal recognition of the right to adequate housing, it is, however, a fact that the norms and principles contained in international instruments have not yet been sufficiently reflected in national policy frameworks in the housing sector or transformed into operational measures. Some have even argued that the right to adequate housing - and other economic, social and cultural rights - are not enforceable but aspirational, since fulfilment of these rights depends much on the availability of public resources.

25. Proper understanding of the nature of State obligation is, therefore, critical in dispelling such misconceptions. The Committee on Economic, Social and Cultural Rights adopted General Comment No. 3[20] in 1990 to clarify the nature of States parties' obligation. According to the Committee, the principal obligation of States parties reflected in article 2.1 of the Covenant requires them to take steps "with a view to achieving progressively the full realization of the rights recognized" in the Covenant. The concept of progressive realization constitutes a recognition of the fact that full realization of all economic, social and cultural rights will generally not be able to be achieved in a short period of time. On the other hand, the Covenant establishes a clear obligation on States in respect of the full realization of the rights in question, and thus imposes an obligation to move as expeditiously and effectively as possible towards that goal.

26. The Committee carefully added that the "progressive realization" of rights does not mean that States can defer indefinitely efforts towards the realization of rights based on availability of resources or other constraints. The Special Rapporteur of the Sub-Commission in his final report elaborated on this issue and clarified that the obligations of States did not imply:[21]

(a) That the State is required to build housing for the entire population;

(b) That housing is to be provided free of charge by the State to all who request it;

(c) That the State must necessarily fulfil all aspects of this right immediately upon assuming duties to do so;

(d) That the State should exclusively entrust either itself or the unregulated market to ensuring this right to all; or

(e) That this right will manifest itself in precisely the same manner in all circumstances or locations.

27. Notwithstanding the above, the Committee's general comments and the Limburg Principles and Maastricht Guidelines clearly set out that many obligations under the Covenant are to be implemented immediately, independent of availability of resources. This would apply especially to non-discrimination provisions and to the obligation of States parties to refrain from actively violating economic, social and cultural rights or withdrawing legal and other protection relating to those rights. Sections I.D and II.A of this report deal with these particular aspects of State obligations and the measures required to fulfil them.

28. Another important area of State obligations is the notion of a "minimum core obligation". Under the Covenant, each State party, notwithstanding its level of economic development, is under a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights found in the Covenant. Defining such minimum essential levels of the right to adequate housing, and corresponding national benchmarks, is therefore crucial in determining the level of compliance by States parties with the provisions of the Covenant and the stage of progressive realization of the right to adequate housing. In this context, the Committee on Economic, Social and Cultural Rights, in its General Comment No. 4, underlined a number of factors which must be taken into account in determining what constitutes "adequate housing". While adequacy is determined in part by social, economic, cultural, climatic, ecological and other factors, the Committee identified the following aspects of the right as essential in determining its "adequacy": (a) legal security of tenure including legal protection against forced evictions; (b) availability of services, materials, facilities and infrastructure; (c) affordability; (d) habitability; (e) accessibility for disadvantaged groups; (f) location; and (g) cultural adequacy.[22]

29. In his questionnaire the Special Rapporteur sought the views and opinions of Governments and members of civil society on the Committee's definition of adequacy. At the time of preparing this report, the number of replies received had not yet reached a critical mass to allow meaningful analysis. A few general observations, however, could be made here on a preliminary basis. While several replies indicated that the concept of adequacy needs to be defined by each country in its context, few indicated that they have already developed indicators and benchmarks. One country indicated that in defining the concept, one needs to take into account the human rights dimension and the Habitat Agenda, and that international indicators and benchmarks should be made use of wherever possible. Another reply emphasized that in developing such indicators, the people concerned should be fully consulted.

30. Given the progressive nature of the realization process of the right to adequate housing, the establishment of reliable indicators on the right to adequate housing will provide an important tool for its monitoring and further analysis, both in a given country and across the globe. Housing rights indicators can, furthermore, serve as a conduit for operationalizing and mainstreaming the right among the development practitioners in the field of human settlement. The need for such indicators has long been on the agenda of the Sub-Commission. The Special Rapporteur on the realization of economic, social and cultural rights dealt with this question in his progress report (E/CN.4/Sub.2/1990/19) submitted in 1990, as did the Special Rapporteur on the realization of the right to housing in his final report (E/CN.4/Sub.2/1995/12). The Special Rapporteur welcomes the recent initiative of UN-Habitat and OHCHR to recommence work under the joint housing rights programme, on the development of indicators based on human rights principles and obligations, taking into account General Comments No. 4 and No. 7 of the Committee on Economic, Social and Cultural Rights. The Special Rapporteur also welcomes the significant progress made in the development of a "housing rights barometer/tool kit" by the Habitat International Coalition which was discussed in his last report.[23] Since that time, this set of indicators and benchmarks has been further refined and tested in the field. Fact-finding missions, training sessions and dialogues have been organized in different parts of the world with both human rights and development NGOs as well as local authorities, in which the tool kit received enthusiastic response from users.

31. In the next report the Special Rapporteur will elaborate on the nature of State obligations, based on the insights and information emerging from available indicators on the right to adequate housing, on the replies received from Governments and civil society to the questionnaires, lessons learnt from country missions and other analysis.

D. International cooperation

32. The Special Rapporteur emphasized in his first report that, in addition to the valuable discussions on the need to meet the internationally agreed targets for official development assistance ODA,[24] it is critical that the solidarity and fraternity dimensions of international cooperation be given urgent attention.[25] The Millennium Declaration adopted by the General Assembly recognized "solidarity" and "shared responsibilities" as fundamental values essential to international relations in the twenty-first century.[26] It further set a goal for the international community "to have achieved a significant improvement in the lives of at least 100 million slum dwellers" by 2020.[27] In achieving these objectives, it is especially critical to recognize the obligations on States emerging out of the international legal provisions on international cooperation,[28] given the current global reality of growing income disparities and attendant increases in poverty and marginalization. As stated earlier, the process of dialogue initiated by the ECOSOC and the preparatory process for the International Conference on Financing for Development offers an important forum for addressing the coherence in the policies and guiding principles of bilateral and multilateral institutions that drive economic globalization. Serious attention must be paid to the need to assist developing countries in their efforts to improve the housing and living conditions of the poor and inadequately housed, through "joint and separate action" as provided in article 2.1 of the Covenant, including by ensuring that States' international policies, or policies evolved at multilateral forums and institutions, are formulated so as to respect the full realization of economic, social and cultural rights for all.

33. The Committee on Economic, Social and Cultural Rights further clarified the international dimension of States parties' obligation in its General Comment No. 4:

> "Traditionally, less than 5 per cent of all international assistance has been directed towards housing or human settlements, and often the manner by which such funding is provided does little to address the housing needs of disadvantaged groups. States parties, both recipients and providers, should ensure that a substantial proportion of financing is devoted to creating conditions leading to a higher number of persons being adequately housed. International financial institutions promoting measures of structural adjustment should ensure that such measures do not compromise the enjoyment of the right to adequate housing. States parties should, when contemplating international financial cooperation, seek to indicate areas relevant to the right to adequate housing where external financing would have the most effect. Such requests should take full account of the needs and views of the affected groups."

34. The solidarity and fraternity dimensions of international cooperation under international human rights instruments create the imperative that no action may be taken nor global social policies adopted which could inhibit States' ability to implement the commitments they have to their people stemming from their obligations under human rights instruments. There are also

obligations on the part of the international community, including international institutions and supra-national entities and parties to various economic agreements, to remove such constraints on developing countries in pursuing their obligations towards their citizens.[29] Human rights can therefore provide valuable tools for States, in particular developing countries, to examine and counter existing and emerging international economic policies on trade, investment, finance, debt servicing, structural adjustment, so as to ensure that these are consistent with the principles and provisions of international human rights instruments.

35. In the context of adequate housing, it is essential that policies and programmes for international cooperation be aimed at assisting States to develop strategies for social justice and equitable distribution of development opportunities and benefits, including through land reform and well-targeted social spending on essential civic services such as access to credit, potable water, electricity, heating and sanitation. In areas suffering deprivation of these services, more sensitive planning mechanisms need to be established so that the needs of the poor can be appropriately addressed and reflected in city and regional plans as well as relevant legislation and policies.

36. States parties are also obliged a priori to implement their covenanted obligations having accepted conditionalities imposed by international financial institutions or under international agreements that might lead to stagnancy or regression in the realization of economic, social and cultural rights for their own citizens, or those of another State party. States parties therefore need to examine policies – those of their own and of others – towards international institutions and international agreements, in order to ensure their consistency with covenanted obligations on the right to adequate housing, including access to basic civic services. Such reviews should include the human rights implications of World Trade Organization trade agreements, particularly the General Agreement on Trade in Services (GATS) and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), country assistance agreements and agreements with the World Bank and IMF, as well as poverty reduction strategies such as the poverty reduction strategy papers (PRSPs). National human rights institutions could play an important role in conducting such reviews.

II. SETTING THE RESEARCH AGENDA: PRIORITY ISSUES IN THE REALIZATION OF HOUSING RIGHTS

A. Discrimination, segregation and the right to adequate housing

37. Commission resolution 2000/9, by which the Special Rapporteur received his mandate, clearly emphasized, and requested him to address, the non-discrimination aspect of the right to adequate housing as reflected in article 14, paragraph 2 (h), of the Convention on the Elimination of All Forms of Discrimination against Women and article 5 (e) of the International Convention on the Elimination of All Forms of Racial Discrimination. Furthermore, the Commission, in paragraph 10 (e) of its resolution 2001/28, called upon all States "to counter social exclusion and marginalization of people who suffer from discrimination on multiple grounds ...".

38. The placing of the housing and discrimination aspects within the context of the indivisibility and universality of human rights is critical. The realization of the right to adequate housing in an environment free from racial discrimination will have a direct bearing on other

congruent human rights, including the right to life, the right to an adequate standard of living, the right to freedom of movement and residence, the right to protection against arbitrary or unlawful interference with privacy, family and home, and the right to popular participation. This section briefly presents a framework for the work of the Special Rapporteur and guidelines that may assist States in solving the manifold problems of discrimination in housing apparent in many parts of the world.

39. The Special Rapporteur regards the convening of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance in September 2001 and its follow-up in the coming years as unprecedented opportunities to reaffirm the right to non-discrimination with regard to adequate housing. The Special Rapporteur actively participated in the preparatory process, and submitted a statement to the Conference (A/CONF.189/9), in which he urged States to reaffirm their corresponding obligations to take actions to ensure that the right to adequate housing can be gained and retained in an atmosphere free from racial and other forms of discrimination.

40. The Special Rapporteur welcomes the attention given to housing and discrimination issues in the Declaration and the Programme of Action adopted at Durban (A/CONF.189/12) The Declaration recognized the existence of discrimination in access to housing, along with other economic, social and cultural rights (para. 33) and recommended special measures for victims, including appropriate representation in housing (para. 108). The Programme of Action further recommended developing programmes for people of African descent, allocating additional investments to housing, along with other services (para. 8). With regard to migrants, it recommended that host countries consider the provision of adequate social services, in particular in the areas of health, education and adequate housing, as a matter of priority (para. 33), and urged all States to prohibit discriminatory treatment against foreigners and migrant workers, including in the granting of housing (para. 81). States were urged to recognize the effect of discrimination and to take appropriate measures to prevent racial discrimination against persons belonging to minorities in respect of employment, housing, social services and education and, in this context, forms of multiple discrimination should be taken into account (paras. 48 and 49).

41. Under the section "Action-oriented policies and action plans", the issue of housing was particularly highlighted along with other social services. The Programme of Action urged States to promote residential integration of all members of the society at the planning stage of urban development schemes and other human settlements, as well as while renewing neglected areas of public housing, so as to counter social exclusion and marginalization (para. 102). It further urged States to collect reliable statistical data on housing (para. 92) and to establish national programmes and measures to promote the access of groups of individuals who are or may have been the victims of discrimination to social services, including adequate housing (para. 100).

42. The Special Rapporteur reiterates that recognition of these issues related to adequate housing and discrimination should be placed firmly within the human rights framework accorded by relevant articles of the international human rights instruments and in the interpretations and reaffirmation of these provisions by treaty bodies and other United Nations bodies in their general comments, general recommendations and resolutions.[30]

43. Furthermore, as the Special Rapporteur emphasized in his first report, discrimination and segregation in housing can be based not only on grounds of race, class or gender, but can also result from poverty and economic marginalization. In its statement on poverty, (E/C.12/2001/10) the Committee on Economic, Social and Cultural Rights elaborated:

> "Non-discrimination and equality are integral elements of the international human rights normative framework, including the International Covenant on Economic, Social and Cultural Rights. Sometimes poverty arises when people have no access to existing resources because of who they are, what they believe or where they live. Discrimination may cause poverty, just as poverty may cause discrimination. Inequality may be entrenched in institutions and deeply rooted in social values that shape relationships within households and communities. Accordingly, the international norms of non-discrimination and equality, which demand that particular attention be given to vulnerable groups and individuals from such groups, have profound implications for anti-poverty strategies."

44. The Special Rapporteur is aware of discrimination practised by way of distinctions created through the status of "nationality" and "citizenship", and remains gravely concerned at the continuing practice of population transfer arising from the collective denial of tenure, dispossession, expulsion, denial of refugees' and internally displaced persons' rights of return/restitution/compensation, and the implantation of settlers and settlements.[31]

45. As pointed out in his first report, in today's context of globalization and the free market economy, there is a trend towards increased marginalization of the poor as manifested by the growing number of people having to cope with land speculation, the commodification of housing, the application of "user fees" for essential services for living such as water, sanitation and electricity, and the repeal or amendment of land ceiling and rent control legislation.[32] These concerns have been documented in a number of studies,[33] and are further analysed in the subsequent section of this report.

46. To assist in the follow-up to recommendations and commitments made at Durban, the Special Rapporteur respectfully recommends that Governments and other concerned parties:

(a) Enact or strengthen legislative measures that prohibit racial discrimination in all areas of the public and private sectors, including housing, planning and land policies and provision of building materials, services and housing finance;

(b) Ensure that policies, programmes, and budgetary and financial allocations are carried out in good faith to promote equal access to civic services essential to the realization of the right to adequate housing - including potable water, electricity and sanitation - repeal policies and programmes that promote discriminatory access;

(c) Guarantee access to judicial remedies for violations of the right, such as forced evictions, deliberate denial of civic services, including reparations for damages suffered, in accordance with article 6 of the International Convention on the Elimination of All Forms of Racial Discrimination;[34]

(d) Develop national institutions with adequate resources and mandates to monitor legislative, judicial and administrative services, including to receive complaints, and the capacity and authority to undertake follow-up action;

(e) Undertake affirmative action to diminish, eliminate and compensate for conditions that cause or help to perpetuate discrimination in the realization and retention of the right to adequate housing;[35]

(f) Eliminate barriers to the enjoyment of the right to adequate housing that are disproportionately faced by ethnic and racial minorities and indigenous peoples living in life-threatening and health-threatening housing conditions; special attention needs to be given to particularly vulnerable groups, i.e. persons affected by HIV/AIDS, so that they do not suffer from discrimination in housing;[36]

(g) Remove legal, administrative and social obstacles to women's full and equal right to own land and other property and their right to adequate housing, including through exercise of the right to inheritance,[37] with particular attention to women who face double discrimination, including women with disabilities, HIV/AIDS, minority or other vulnerable status, as well as women who have faced forced evictions;[38]

(h) Ensure in particular that no child will be subjected to discrimination with regard to his or her right to adequate housing on the grounds of his or her parents' race, colour, national or ethnic origin, sex, property or other status, and that special protection and assistance be provided to children living in the streets and those temporarily or permanently deprived of a family environment;[39]

(i) Institutionalize inter-ministerial coordination so as to ensure that the formulation and implementation of economic globalization policies, such as those in the areas of trade, investment, finance, structural adjustment and debt, do not cause the State to contravene covenanted human rights obligations and aggravate living conditions for those people and communities facing discrimination and segregation with regard to housing, land and access to related civic services;

(j) Address the multiple discrimination facing minority, indigenous and distinctly low-income communities the habitability of whose housing is made hazardous by the environmental degradation of the areas where they live, often adjacent to an environmentally degraded workplace;

(k) Institutionalize ethical housing, land-use and planning practices, including the preparation of city and regional master plans, such that segregated residential patterns and discrimination in facilities do not form based on group identity of race, colour, descent, national and ethnic origin - as well as religion.[40] Moreover, it is essential that in the formulation and implementation of these plans, residents enjoy the right to participation, including through participatory budgetary processes, on a basis of non-discrimination and equality;

(l) Provide domestic remedies for violations of the right to adequate housing, including facilities, training for legal practitioners, regulations and procedures, policy guidance, efficient administration of justice, equal court access and public education towards improved prosecution, litigation and other forms of dispute resolution with judicial effect;

(m) Strengthen the efforts to monitor the living conditions of marginalized racial and ethnic groups, particularly with regard to fundamental economic, social and cultural indicators, including housing, and efficiently collect and disaggregate data according to different criteria such as gender, age, ethnicity, etc.;[41] and

(o) Protect and promote economic, social and cultural rights, keeping in mind the interests of the whole population such that no group suffers from discrimination, especially in the particularly odious practice of population transfer and the implantation of alien settlers.

The Special Rapporteur looks forward to receiving information on measures undertaken and obstacles encountered.

47. The Special Rapporteur recognizes that much more research is needed to determine the precise impact of institutionalized and other forms of discrimination and segregation that particular people and communities face in their struggle to gain and retain the right to adequate housing and land. The specific short-term and long-term impact of residential segregation also needs further study. A future research agenda therefore needs to focus on areas such as:

(a) The precise meaning of the "immediate obligation" for housing that stems from the non-discrimination provisions of various human rights instruments;

(b) The meaning of "affirmative action" in the context of the right to housing for particular groups and individuals;

(c) The impact of discriminatory planning and housing laws and polices on particular groups and individuals such as women;

(d) The ways in which Government at the local, national, regional and international levels integrate non-discrimination and housing principles and provisions into their development and anti-poverty programmes, including PRSPs;

(e) How the fundamental guarantee of non-discriminatory access to the right to adequate housing, as defined by United Nations treaty bodies, strengthens the argument that the right to adequate housing is a fully justiciable right; and

(f) The need for an exhaustive survey of the growing jurisprudence, including case law from national and regional courts as well as concluding observations emerging from treaty bodies that shed new light on the many dimensions of housing and discrimination across the world.[42]

48. The Special Rapporteur will continue to develop the framework on housing and discrimination presented above. He will request a response to this framework in future

questionnaires to Governments and civil society and welcomes suggestions for the improvement of both the conceptual and the practical understandings of the complex issues related to housing and discrimination, as well as the submission of relevant information and experiences.

B. The impact of globalization on the realization of housing rights, including the effects of privatization of water services

49. While there has been a concern among the international community that globalization has exacerbated the current deepening inequality between and within nations, its direct impacts on the right to adequate housing - broadly defined to include access to land, as well as other essential services such as water, electricity and sanitation - have yet to be systematically studied or estimated. In his first report, the Special Rapporteur indicated his intention to establish linkages between the processes of globalization and the realization of the right to adequate housing.[43] At the request of the Special Rapporteur, the Habitat International Coalition convened a meeting of international experts in New Delhi in November 2001 to examine selected case studies and to propose a research methodology for cataloguing the characteristics of existing alternative urban management practices in different cities around the world and testing their effectiveness in protecting, promoting and fulfilling the right to adequate housing.

50. It is generally recognized that the impacts of globalization on housing are complex and varied. Moreover, globalization affects countries and regions within countries differently depending on a range of factors, including the level of integration of the local economy into the international economy; the national and local policy context and degree of decentralization of power; the influence of different institutions in each country and locality; and demographic characteristics. Nonetheless, at the global level, the number of humanity's homeless or precariously sheltered persons continues to grow in step with indicators of economic inequality. To understand why this is occurring while global economic integration is creating new wealth as never before seen requires a better understanding of how and why processes of economic globalization are apparently not leading to the fulfilment of economic, social and cultural rights as contained in the international human rights instruments.

51. Overall, globalization and the process of increasing economic integration have limited the role and capacity of States to provide adequate resources and other provisions which are often necessary in fulfilling economic, social and cultural rights. Several macroeconomic factors influence the availability of resources for social spending, including on housing and essential civic services, including:

(a) Small or even negative returns from trade liberalization by developing countries, particularly LDCs;

(b) Financial volatility following deregulation of capital flows coupled with interest rate hikes which affect access to credit and mortgages;

(c) Increased land speculation as a result of more competition for prime locations in rapidly globalizing cities, which often forces out low-income residents to less-desirable locations with poor service availability;

(d) Heavy burdens of debt-servicing;

(e) Fiscal constraints and austerity measures imposed by the IMF and the World Bank which are primarily designed to reduce public spending, and invariably lead to reductions in financial allocations to social sectors; and

(f) The process of public sector reform, particularly through decentralization and privatization.

52. In many cases, decentralization has enabled increased participation of civil society and the marginalized groups in the decision-making process that have direct bearings on their well-being. Decentralization of service delivery and public administration related to housing can have marked benefits when adequate resources are transferred into the hands of responsible and capable actors, including civil society groups, at the local level. When resources transferred are not commensurate with the responsibilities, local authorities are faced with the challenge of financing the gap from their own budgets and/or other sources, including by borrowing from the private sector through municipal bonds, attracting more business to raise tax revenue, or speculating on land and property.

53. Increased competition among cities to attract capital and businesses for generating employment and sources of tax revenues has led to widening inequalities between cities, with consequent discrepancies in the level of essential services provided to citizens. In large cities, the growing competition for central spaces has also initiated gentrification and the creation of new ghettos of exclusion. In economically neglected cities and rural areas, local authorities continue to face difficult challenges with limited revenues to deal with unemployment, increased demand for social security and the need to upgrade public services.

54. In the urban housing sector, reliance on market mechanisms has tended to result in neglect of the poor. The continuing deterioration of conditions, particularly with respect to housing and related services, faced by the majority of the urban and rural poor around the world has caused tremendous concern that unfettered globalization cannot bring about the fulfilment of economic, social and cultural rights, including the right to adequate housing. Notwithstanding the constraints and difficulties placed upon them, central Governments still have an important role to play in reconciling macroeconomic policies with social objectives, keeping in mind the primacy of their human rights obligations. Governments have the responsibility to make targeted interventions in order to ensure universal access to public services on a fair and equitable basis; this is fundamental for the fulfilment of the right to adequate housing. When participating in ongoing trade negotiations under the WTO, States should not forget their responsibility to ensure that their policies are compatible with their obligations under international human rights instruments. The General Agreement on Trade in Services (GATS), in particular, is expected to further deepen the process of privatization of resources and services relevant to housing rights, such as electricity, water, sanitation, transport, construction materials, etc.

55. Privatization of essential services is another aspect that warrants close attention when assessing the impact of globalization on the right to adequate housing. Striking the balance between the promised gains of privatization in terms of economic efficiency and reduced cost of

services vis-à-vis its social costs is a very complex and delicate matter for many Governments and international institutions that promote the policy. The Special Rapporteur has emphasized the primacy of human rights obligations in implementing such policies and programmes and that it is the "first responsibility" of States to achieve human rights for poor and vulnerable groups. Drawing from a preliminary case study, the rest of this section demonstrates specific impacts of privatization on one of the important elements of adequate housing: provision of potable water.

56. As the Special Rapporteur pointed out in his first report, full realization of the right to adequate housing is closely interlinked with and contingent upon fulfilment of other rights and services, including access to safe drinking water and sanitation.[44] No dwelling should be deprived of water because such deprivation would render it unliveable.[45] A review of current literature on the impacts of recent privatizations of water and sanitation services found that the vast majority of available case studies fail to demonstrate improvements in the quality and coverage of services to vulnerable groups. Indeed, higher costs to and service cut-offs of persons unable to pay higher rates have been more common, especially in developing and transition countries. This review also vindicates the concern that privatizations, while relatively easy to initiate, are extremely difficult to implement where universal coverage with acceptable quality at affordable prices for all is the stated goal of the service.[46] Furthermore, when the population to be served includes low-income groups living in difficult-to-service areas and/or conditions, privatized service providers have generally been reluctant to invest in multiple forms of delivery or to apply cross-subsidies to meet the needs of these groups effectively. Nonetheless, support and encouragement from the World Bank and regional development banks for across-the-board privatization of water and sanitation services in low-income communities has been steadfast for more than a decade.[47]

57. From a human rights perspective, three important lessons are drawn from the experiences and shortcomings of the privatization of water services, relating to the (a) overemphasis on profit-making or cost-recovery; (b) extent of the quality and coverage of services to the vulnerable groups; and (c) accountability of operators.

58. First, privatization by its nature is increasingly forcing central and local authorities to become profit-seeking in the provision of essential services. In a context where a large portion of the population lives in poverty, many groups cannot absorb the costs of providing a market rate of return to the investor for services provided through market mechanisms. Unless some costs are subsidized for these groups, as called for by general obligations of human rights instruments, they are likely to be excluded from receiving the services they need.

59. Secondly, earlier experiences of privatization also indicate that this emphasis on cost recovery - a cardinal principle of privatization - may also fragment service delivery and coverage. Many cities in developing countries are new to running social services and infrastructure provision as profit-making ventures. As noted earlier, rates of return and healthy cash flows for making repayments may take a much higher priority in project design than will poverty alleviation, or improvement of health and living conditions. It is thus quite possible that a city may borrow money to develop a new sewer system, ostensibly to better serve all the city's residents. The sewer will first be extended to areas that can pay the full price for the new services, typically the better-off areas. However, if lower-income areas fail to pay the same price for the services, the project may become unable to pay for itself. The city will then be obliged to

tap into other sources of revenue (local taxes, for example) to meet its repayment obligations. If the money taken from the city's general revenue was to have been used to support other social services for the poor, then the poor are doubly worse off, having enjoyed neither the benefits of the sewer nor the services that would have been supported from the general revenue.

60. Thirdly, the accountability of private service operators vis-à-vis fulfilling the obligations Governments have taken on under the international human rights instruments needs careful attention. There is a growing number of instances of faulty advice and unethical, if not illegal, practices by private providers, as well as consulting firms and other institutions that aggressively promote privatization. In the United Kingdom, where privatization of water and sewerage provision has been scrutinized carefully, a study found that after privatization, profits started to soar in real terms at a time when customers faced continual price rises. A public outcry followed over the high salaries and benefits enjoyed by company directors.[48] Bolivia, at the behest of the World Bank, turned over management of the Cochabamba city water and sewage system to a single-bidder concession of international water corporations in 1999/2000. Under the arrangement, which was to last for 40 years, water prices increased immediately from admittedly negligible rates to approximately 20 per cent of monthly family incomes. Citizens' protests were eventually met with an armed military response that left at least six residents dead. The protests continued unabated until the consortium was forced to flee the country.[49]

61. Public-sector underwriting of private investment risks can have devastating effects on the economy and social cohesion in case of default. Such risks include the failure of the project (e.g. Tucumán, Argentina); the contract becoming unworkable (e.g. Dolphin Coast, South Africa); the company failing (e.g. Azurix, Buenos Aires Province, Argentina); and corruption and distorted accounting (e.g. Grenoble, France).[50] A database compiled by the Public Service International Research Unit[51] reveals several cases of major water privatization efforts that have come under a cloud for one reason or another in the past few years.

62. As alarming as these concerns may be, it is equally important to note that some of the best practices found in water and sanitation provision in developed and developing countries are publicly operated. The vast majority of people in North America, Europe and Japan receive water and sanitation services from publicly owned and operated facilities. These often compare favourably in terms of efficiency with privately operated facilities. Some examples of reforms of public sector water undertakings can be found in São Paulo, Brazil, Debrecen, Hungary, Lilongwe and Tegucigalpa.[52] Indeed, a multicountry comparison of public service delivery in developing countries found that "purely public water supply systems were among the best performing services overall".[53]

63. Ensuring links with the local needs through wider participation of the community is an essential factor in promoting broader accountability. In the Philippines, where cost recovery is well above the Asian average, water districts have an organizational structure which provides for representation of users. In the Netherlands, municipally owned water companies have a high degree of transparency and accountability, through having representation of workers on the supervisory board and users in locally elected bodies.[54] In the State of Rajasthan, India, a civil society organization, Tarun Bharat Sangh, has shown remarkable results by working with villagers to regenerate groundwater through environmental restoration.

64. At the same time, local authorities and organizations of civil society in many cities around the world are seeking to provide alternative approaches to urban development and management. Indeed, there are incipient examples of new approaches. Among these are the "Human Rights Cities" initiative, in which cities[55] have made commitments to implementing participatory budgets, or attempting to guide municipal decision-making by adopting a human rights framework, or implementing thoroughgoing decentralization of administration and decision-making through democratic processes. It is believed that there are many variants of such processes. Some of them have shown promise, but have yet to be properly documented and analysed to determine their concrete and sustainable results.

65. In order to identify and understand the differences in policy and outcomes in different regional and national contexts, further research and analysis is needed on such experiences in a number of cities undergoing rapid integration into the international economy. From these experiences it will be possible to draw lessons to assist policy makers, local authorities and civil society groups to make globalization more inclusive, while minimizing negative impacts on the realization of the right to adequate housing. Based on such research, an expert group meeting could be organized to assist government authorities and civil society organizations to use a human rights framework to identify policies and measures that are most likely to improve conditions for low-income and marginalized groups in cities.

C. Gender discrimination in housing and land rights

66. As mandated by the Commission, the Special Rapporteur has consistently and expressly maintained a focus on the gender aspects of all of his activities. On the occasion of the fifty-seventh session, he held a consultation with the Special Rapporteur on violence against women with a view to exploring common approaches and complementarities between the two mandates. Issues such as forced eviction involving women, resulting from external forces or domestic violence, are obvious areas where the two mandates can complement each other. The Special Rapporteur, encouraged by Commission resolution 2001/28 to cooperate with other Special Rapporteurs, will continue to seek opportunities for joint actions, including responding jointly to urgent appeals, with other mandate-holders in this area of crucial importance.

67. The Special Rapporteur welcomes the adoption by consensus of Commission resolution 2001/34 on women's equal ownership of, access to and control over land and the equal rights to own property and to adequate housing, which, in its paragraph 5, expressly reaffirmed women's right to adequate housing. It may be recalled that the International Covenant on Economic, Social and Cultural Rights guarantees in article 2 (2) the rights embodied in the Covenant without discrimination on account of "race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status", and in article 3 places an obligation on States to "ensure the equal rights of men and women". Although discrimination on any of the prohibited grounds therefore constitutes a violation, discrimination often affects women disproportionately. For example, several States still retain legal systems that do not recognize or protect a woman's right to adequate housing, particularly regarding laws dealing with either home ownership or inheritance, or both. For States parties to the Covenant, the obligation to amend such laws so as to eliminate any discriminatory impact is

an obligation of immediate effect and a failure to do so constitutes a human rights violation. The Maastricht Guidelines also recognize this point, and note that the Convention on the Elimination of All Forms of Discrimination against Women provides additional non-discriminatory protection to women with respect to economic, social and cultural rights.[56]

68. The Special Rapporteur put a special focus on gender discrimination in his statement to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (see sect. II.B). The Special Rapporteur reiterates his readiness to undertake more substantive research, and plans to devote a substantive section on women's rights to housing, land and property in his report to the Commission in 2003. In this context, the Special Rapporteur looks forward to reviewing the report of the Secretary-General prepared in accordance with resolution 2001/34, and to receiving further guidance from the Commission as to how he could make practical contributions towards complementing the efforts of Governments and civil society to progressively achieve the goals expressed in this resolution.

III. ACTIONS TO PROMOTE THE PROGRESSIVE REALIZATION OF HOUSING RIGHTS

A. Dialogue with Governments and civil society

69. Pursuant to the directives of the Commission, and building upon the general framework proposed in his first report,[57] the Special Rapporteur has initiated three approaches with a view to developing dialogues with Governments and civil society: (a) through questionnaires; (b) by responding to information received on allegations concerning the situation of housing rights in particular countries; and (c) by undertaking country missions.

1. Questionnaires

70. In September 2001, the Special Rapporteur sent a questionnaire to all Governments as well as to members of civil society, with a view to engaging them in a substantive dialogue towards further developing the "core content" of the right to adequate housing, and to understanding better the meaning of "adequacy" in the context of the right to adequate housing. Pursuant to resolution 2001/28, information was also sought as to relevant policy initiatives and best practices, the legal status of the right to adequate housing, priority issues and experience in overcoming obstacles, as well as needs and capacities for technical assistance.

71. As of the closing date of this report, replies were received from the Governments of Bahrain, Chile, China, Croatia, Cyprus, the Czech Republic, Germany, Guatemala, Mexico, the Russian Federation, Slovenia, Spain, Swaziland, Thailand and Turkey. The Government of Romania also submitted relevant information based on the questionnaire during the Special Rapporteur's mission to the country from 14 to 18 January 2002. Furthermore, numerous non-governmental organizations and civil society groups submitted inputs, including detailed responses from the Human Development Centre (Thailand), the Urban Sector Network (South Africa) and Food First/Institute for Food and Development Policy (United States). The Special Rapporteur is grateful for the information and cooperation he received, and hopes to continue receiving information from more States and members of civil society in order to carry out a substantive analysis in support of his mandate, a summary of which will be included in his

next report to the Commission. The Special Rapporteur also wishes to explore appropriate ways of disseminating such useful information through OHCHR, including on its web site on housing, so that experience and best practices can be shared widely.

2. Urgent appeals

72. In 1991, the Special Rapporteur received more than 20 allegations and urgent appeals from NGOs, civil society groups and individuals[58] related to forced evictions and demolition of houses in Argentina, Bhutan, China, Egypt, Greece, Iceland, India, Indonesia, Japan, Mexico, Monaco, Nepal, Pakistan, the Russian Federation, Spain, Uzbekistan, Yugoslavia, and the Occupied Palestinian Territories. Based on the comprehensiveness of the information received and with due consideration of the seriousness of the situation, the Special Rapporteur made selective interventions in response to these allegations and appeals. From Pakistan, the All-Pakistan Alliance of Katchi Abadis wrote to the Special Rapporteur on 19 December 2000, drawing his urgent attention to the situation of squatter settlements, or katchi abadis, built on Pakistan Railways lands. Concerning Egypt, the Special Rapporteur received information from local and international housing rights organizations, lawyers and the press regarding the demolition and eviction of 32 impoverished families that took place on 21 March 2001 in Duwayqa, located in the Mansh'at Nasr area of east Cairo. The Special Rapporteur continued to monitor the situation in India concerning the housing and living conditions of the tribal and other people displaced by the Sardar Sarovar project on the Narmada River, in the aftermath of the decision by the Supreme Court in Narmada Bachao Andolan v. Union of India and Others, as mentioned in his last report.[59]

73. Keeping within the framework of his mandate to develop dialogues with Governments and to report on the status of the realization of rights related to his mandate, the Special Rapporteur is engaged in active correspondence with concerned Governments. He appreciates the openness of these Governments and their cooperation in responding to the queries. More details will be provided in his next report as cases progress. The Special Rapporteur hopes that such constructive dialogues can serve as a resource in Governments' efforts to seek the needed solution, which may be complemented by seeking international cooperation, where necessary, towards the realization of rights related to the mandate of the Special Rapporteur for the people in the countries concerned.

3. Country missions

74. The Special Rapporteur believes that examining in situ the progress in and obstacles to the realization of rights related to his mandate is an essential component of his mandate. The Special Rapporteur, therefore, has been engaged in dialogues with treaty bodies and United Nations and other agencies, as well as civil society, in order to develop a framework for undertaking country missions. The general objectives of such missions are: (a) to examine and report on the status of the realization of housing rights in the country, with particular attention to aspects of gender equality and non-discrimination; (b) to engage in dialogues with the Government, United Nations and intergovernmental agencies and civil society in their efforts to secure these rights; (c) to identify practical solutions and best practices in the realization of rights relevant to the mandate; and (d) to follow up on concluding observations made by treaty bodies and assess their impacts on policies adopted by the countries concerned.

75. Furthermore, depending on the particular country context, the mission will have a specific thematic focus on priority issues that the Special Rapporteur has presented in this and previous reports, such as: (a) challenges and constraints faced by Governments in guaranteeing the minimum core content of rights in light of the current international economic situation; (b) the principles of non-discrimination and protection of the poor, the vulnerable and minorities; and (c) the scope for international cooperation. In selecting the countries to visit, due consideration will be given to the geographical balance, as well as to the reporting status of the countries under the treaty bodies.

76. Based on the above framework and on the questionnaires sent, the Special Rapporteur undertook a mission to Romania from 14 to 19 January 2002, a report of which will be submitted to the Commission as an addendum to this report (E/CN.4/2002/59/Add.1). The Special Rapporteur is also planning to undertake missions to Mexico and Kenya during 2002, and would appreciate receiving information that might facilitate his preparations for these missions.

77. Separately, the Special Rapporteur had an opportunity to visit Israel and the Occupied Palestinian Territories from 5 to 10 January 2001, at a time when the demolition of Palestinian settlements in Rafah had intensified. He was invited by Ben Gurion University and the Legal Center for Arab Minority Rights in Israel (Adalah). During the visit, the Special Rapporteur availed himself of the opportunity to meet with a group of NGOs, United Nations and intergovernmental agencies and Palestinian authorities, in order to collect information necessary for reporting to the Commission during its fifty-eighth session in response to resolution S-5/1 adopted on 19 October 2000, in which the Special Rapporteur, along with several other thematic rapporteurs, was requested to undertake an immediate visit and to report the findings to the Commission and the General Assembly.

B. Cooperation with treaty bodies and other United Nations human rights mechanisms

1. Committee on Economic, Social and Cultural Rights

78. On 11 May 2001, at the twenty-fifth session, the Special Rapporteur had an exchange of views with the Committee, with a view to exploring the scope of cooperation between his mandate and the work of the Committee. The Special Rapporteur identified several possible areas for cooperation with the Committee, including facilitating exchange of information, the standard-setting function of the Committee, and strengthening of States parties' capacities in monitoring the implementation of the Covenant. The Special Rapporteur would also pay particular attention during his country missions to the follow-up to the concluding observations and general comments adopted by the Committee. He further indicated his readiness to cooperate with the Committee and other mandate-holders on relevant thematic issues including globalization, trade agreements, international cooperation, access to safe drinking water and PRSPs. The Committee appreciated and generally endorsed the approach of the Special Rapporteur, and appointed a focal point to facilitate further cooperation with him. The Committee also encouraged him to work closely with the newly created mandate of the

independent expert on a draft optional protocol to the Covenant. During the session, the Committee adopted a statement to the special session of the General Assembly, fully supporting the right to adequate housing and the approach taken by the Special Rapporteur in his first report to the Commission.[60]

79. Further to the expert seminar on human rights and extreme poverty organized by OHCHR from 7 to 9 February 2001, in which the Special Rapporteur participated, he has followed the Committee's work on poverty with keen interest. He applauds the work of the Committee towards encouraging the integration of human rights into poverty eradication policies by outlining how human rights generally, and the Covenant in particular, can empower the poor and enhance anti-poverty strategies. The adoption of the statement of the Committee on poverty ("poverty statement") on 4 May 2001 (E/C.12/2001/10) is a significant step towards this goal, which holds a key to the realization of all human rights, including the right to adequate housing. The Special Rapporteur also contributed to the inception of the work now being carried out by OHCHR involving a member of the Committee, in developing a framework for the integration of human rights into poverty reduction strategies, including the PRSP.

80. The Special Rapporteur continued to follow the developments in the Committee on Economic, Social and Cultural Rights during 2000-2001. From the twenty-fourth session in November 2000 to the twenty-sixth session in August 2001, the Committee reviewed and adopted concluding observations on 21 States parties' reports, of which 19 contained detailed examinations of the implementation of the right to adequate housing under article 11, paragraph 1, of the Covenant. Issues of particular concern highlighted by the Committee included:

(a) Persisting or increasing homelessness and incidents of forced eviction, as well as the shortage of social housing for single-parent and low-income families in developed countries;[61]

(b) Several aspects of discrimination with regard to housing against indigenous populations;[62] based on work and descent;[63] and traditional and other discriminatory practices against women;[64]

(c) Ensuring the compliance with the Covenant in the aftermath of natural disasters (Hurricane Mitch in Honduras and Hanshin-Awaji earthquake in Japan);

(d) Lack of reliable information, statistical data and a coherent national strategy regarding housing rights;

(e) Effects of national and international economic policies such as minimum wage, privatization and social assistance on the right to an adequate standard of living, including housing.[65]

81. The Committee is increasingly focusing its attention on poverty regardless of the level of development of the State party under review. One such example was its concluding observation on Germany at the twenty-sixth session (E/C.12/1/Add.68), in which the Committee reiterated its concern that the social assistance provided to the poor and socially excluded was not

commensurate with an adequate standard of living, as the State party had not yet established a definition of poverty, nor a poverty threshold. The Committee thus urged the State party to establish a poverty threshold for its territory, taking into account, inter alia, the Committee's statement on poverty. Furthermore, the Committee suggested that the State party review and strengthen its institutional arrangements within the public administration to ensure that its obligations under the Covenant are taken into account at an early stage in the formulation of legislation and policy on issues relating to social welfare and assistance, housing, health and education. To this end, the Committee encouraged the State party to introduce "human rights impact assessments" to ensure that the provisions of the Covenant are given due attention in all legislative and administrative policy and decision-making processes.

82. As evident from the above, there is a wealth of information, analysis and jurisprudence related to housing rights in concluding observations adopted by the Committee on Economic, Social and Cultural Rights and other treaty bodies. In view of the limited space in his annual reports to the Commission, the Special Rapporteur recommends that OHCHR disseminate widely such information and analyses in an easily accessible manner, including through the use of the Internet.

2. Committee on the Rights of the Child

83. On 22 May 2001, during its twenty-seventh session, the Special Rapporteur had an opportunity to address the Committee and to discuss possible areas of cooperation pursuant to Commission resolution 2001/28.[66] In briefing the Committee on his mandate and work undertaken, he pointed out that child rights were identified as one of the priority issues in the realization of the right to adequate housing. The prevention of homelessness for children and the protection of the rights of children living in the streets, an issue of particular interest to the Committee, have been singled out by the Special Rapporteur for particular attention.

84. The Special Rapporteur and the Committee discussed further several issues of common interest, including the relevance of gender and ethnic discrimination, the issue of forced evictions, the importance of macroeconomic factors, the concept of "safety" as an indispensable element of the right to "secure" housing, and the interesting connections between the right to adequate housing and the right to privacy, as well as the right to the highest attainable standard of health (including mental health). Committee members welcomed the initiatives of the Special Rapporteur to facilitate collaboration between his mandate and the human rights treaty bodies. The discussion highlighted the need to ensure an efficient exchange of information and to maintain an ongoing productive dialogue, involving both treaty bodies and the Special Rapporteur, as well as other relevant human rights mechanisms. The Special Rapporteur is grateful for the support given by the Committee in the form of a statement adopted by the Committee, which was submitted to the special session.[67]

85. The Special Rapporteur also intends to focus on areas of specific concern to the Committee in his dialogues with Governments, in his country missions, as well as in other activities related to his mandate. Analysis of 27 concluding observations adopted by the Committee on the Rights of the Child from its twenty-sixth to twenty-eighth sessions reveals that the problem of children living in the streets is at the forefront of the Committee's concerns in most of the countries reviewed. The Committee also focused its attention on urban-rural

disparities and de facto discrimination against children in rural areas, or those belonging to minority, migrant, refugee and internally displaced families. Concerns were also expressed with regard to the non-eligibility to own and inherit property of children in intercountry adoption[68] or girls, children born out of wedlock, and young mothers belonging to Islamic groups.[69]

86. Poverty, poor housing, inadequate nutrition and health care have been an overriding concern of the Committee in recent years. In his report to the Commission in 2001 the Special Rapporteur highlighted the links between the right to adequate housing and the provision of clean water and sanitation, as well as the importance of addressing poverty in this context. Echoing the Committee's calls upon States parties to develop a system of data collection and indicators consistent with the Convention in order to better address the needs of children and to implement the Convention effectively, the Special Rapporteur recommends that OHCHR and UN-Habitat, in close consultation with the Committee and UNICEF, develop such a system in the context of the joint housing rights programme with a particular focus on children and housing rights.

3. Committee on the Elimination of Discrimination against Women

87. The Special Rapporteur places particular importance on the work of the Committee, in view of his mandate to apply a gender perspective in his work, and also in the context of Commission resolutions 2001/34 and 2000/13. As the Committee stated in its General Recommendation 21 on equality in marriage and family relations, the right to own, manage, enjoy and dispose of property is central to a woman's right to enjoy financial independence, and in many countries will be critical to her ability to earn a livelihood and to provide adequate housing and nutrition for herself and for her family. The Special Rapporteur is scheduled to have a dialogue with the Committee during 2002, and looks forward to discussing possible areas of cooperation between his mandate and the work of the Committee, which could include further research to support the standard-setting work of the Committee and follow-up to its concluding observations.

4. Other treaty bodies

88. On 20 and 21 November 2001, during its twenty-seventh session, the Committee against Torture considered the third periodic report of Israel (CAT/C/54/Add.1). The review of the State party's report coincided with a fresh incursion into the Rafah refugee camp in Gaza on 20 November by the Israeli occupation army, which destroyed 11 Palestinian family homes. According to the Committee's information, some 380 houses in Gaza were demolished in the first year of the current uprising. Another source pointed out that as of that date, 500 Palestinian houses had been destroyed and 2,000 persons, including children, made homeless. The Committee viewed such destruction of civilian homes, which had taken place at night and without warning, as tantamount to cruel and inhuman treatment.

89. The Special Rapporteur notes with interest the concluding observation adopted by the Committee (CAT/C/XXVII/Concl.5), in which it expressed its concern that Israeli policies on closure and on house demolitions may, in certain instances, amount to cruel, inhuman or

degrading treatment or punishment The Committee further recommended that the State party should desist from the policies of closure and house demolition where they offend article 16 of the Convention".

90. Significantly, the Committee also focused its attention on practices amounting to collective punishment under "closure" of the Occupied Palestinian Territories since 1993, which has become increasingly severe over the past year and amounted to extreme deprivation of the means of livelihood for the civilian population and of their rights to adequate housing, access to water and other services.

91. Keeping in mind article 11, paragraph 1, of the International Covenant on Economic, Social and Cultural Rights and General Comment No. 7 of the Committee on forced eviction, the Special Rapporteur will further examine the important link between forced eviction and the provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in his future work, bearing in mind the indivisibility and interrelatedness of all human rights. In view of this conceptual link and the new insight this brings to the relationship between the right to adequate housing and civil and political rights, the Special Rapporteur will continue to follow the work of the Committee and also seek to develop working relations with the Special Rapporteur on torture.

5. Sub-Commission on the Promotion and Protection of Human Rights

92. On 13 August 2001, at the fifty-third session of the Sub-Commission, the Special Rapporteur was invited to take part in the discussion, among a group of high-level experts and representatives of international organizations and United Nations human rights mechanisms on preparations for the Social Forum. The purpose was to exchange views on the concept of the Social Forum and to consider how such a forum could better contribute to the work of the Sub-Commission and other United Nations human rights mechanisms by acting as an "intellectual antechamber" of the Sub-Commission in its efforts to clarify the relationship between human rights, social issues and vulnerability.

93. At the same session, the Sub-Commission adopted resolution 2001/21 on intellectual property and human rights, in which it encouraged the Special Rapporteur to include in his reports a review of the implication of the TRIPS Agreement for the realization of the rights falling within his mandate. While this necessitates serious research on many dimensions of the TRIPS Agreement, one aspect that could be examined from the broad perspective of his mandate would be the possible impact of the Agreement on the lands, knowledge, culture and livelihoods of indigenous peoples. Appropriate protection of indigenous knowledge constitutes an intrinsic part of respecting their rights to culture, land, property and an adequate standard of living, including adequate housing. Deprivation of such rights could potentially lead to displacement of the indigenous peoples from their habitat. The Special Rapporteur will pay particular attention to the possible implications of the TRIPS Agreement for his work relating to indigenous people and, in this context, he stands ready to cooperate with mandates established by the Commission and the Sub-Commission, particularly the Permanent Forum on Indigenous Issues and the Special Rapporteur on the situation of the human rights and fundamental freedoms of indigenous people.

C. Cooperation with United Nations organizations and bodies

1. United Nations Human Settlement Programme (UN-Habitat)

94. On 21 December 2001, the General Assembly adopted resolutions 56/205 and 56/206, in which it decided to transform, with effect from 1 January 2002, the Commission on Human Settlements and its secretariat, the United Nations Centre for Human Settlements, into the United Nations Human Settlement Programme (UN-Habitat) as a subsidiary organ of the General Assembly. The Special Rapporteur welcomes the decision of the Assembly to transform the Centre into a Programme which, in effect, upgrades the status of UN-Habitat within the United Nations system. This should augur well for further coordination of efforts within the United Nations system in assisting Governments and UN-Habitat partners in the implementation of the Habitat Agenda, including the progressive realization of the right to adequate housing. The Special Rapporteur notes with appreciation the increasing emphasis placed by the Executive Director on a rights perspective in the work of UN-Habitat.

95. The Special Rapporteur further encourages mainstreaming of human rights in the activities of UN-Habitat, in particular, in further elaborating the joint housing rights programme with OHCHR. From a human rights standpoint, issues of non-discrimination and of governance are important components in developing strategies for the progressive realization of housing rights. Furthermore, members of civil society should play a prominent role in implementing such a programme, in view of their outreach and capacities and of the fact that they are the voices of the poor. Most of all, it is important that the housing rights programme not end up as another campaign of a general nature, but have a strong and sustained focus on implementation and operationalization in the area of the right to adequate housing.

96. The Special Rapporteur wishes to place on record his appreciation for the support for his mandate that he has received from UN-Habitat including his participation in events organized by UN-Habitat during the Istanbul +5 session, such as the panel discussion on the right to adequate housing and the parallel event on strategies for realizing women's right to land and property, as well as in the parallel activities organized during the last sessions of the Commission on Human Settlements and the Commission on Human Rights. In the opinion of the Special Rapporteur, it is of paramount importance that efforts be continued to bring the issues of relevance to his mandate to the meetings of UN-Habitat and its Governing Council. In this context, the Special Rapporteur expresses his interest and willingness to contribute to the first session of the Urban Forum and to benefit from this opportunity to continue to collect best practices and experiences among Governments and Habitat partners in their efforts towards progressive realization of housing rights. The Special Rapporteur also looks forward to further cooperation with UN-Habitat in the preparation of his country missions and their follow-up.

2. United Nations Children's Fund (UNICEF)

97. At the invitation of the UNICEF Innocenti Research Centre in Florence, Italy, which is the main research arm of UNICEF established in 1988 to provide an international knowledge base and training focused on the rights of the child, the Special Rapporteur participated in an expert consultation on 1 and 2 November 2001 for the preparation of a publication in the Innocenti Digest series on children in poor urban areas. The aim of the publication is to raise

awareness of the large and increasing number of children who grow up in a situation of poverty and deprivation in urban areas and to highlight strategic options for addressing such problems from a human rights perspective. This includes issues of relevance to the mandate of the Special Rapporteur such as access to housing and basic services, protection measures, and democratic participation in the decision-making process.

98. The Innocenti Research Centre has been undertaking a number of other important research initiatives in areas related to the mandate of the Special Rapporteur, including on access to basic public services[70] and the impact of globalization on children.[71] Since September 2000, the Innocenti Research Centre has also hosted the international secretariat for the Child-Friendly Cities (CFC) initiative, which was launched in 1996 as an outcome of the Habitat-II conference. On 3 November 2001, the Special Rapporteur participated in a meeting organized in conjunction with the above-mentioned expert consultation on the Digest, with a view to collecting the views of experts to discuss future strategies for the CFC initiative. According to UNICEF, some 60 per cent of children in the developing world will be living in cities by the year 2025, and half will be poor. The Special Rapporteur therefore supports the CFC objective of building the capacity of cities committed to developing a rights-based agenda for children through networking activities among municipalities, communities, experts, child/youth groups and other partners interested in sharing experiences and information on innovative policies and programmes aimed at making cities child friendly. From the perspective of his mandate, the Special Rapporteur looks forward to further cooperation with UNICEF and the CFC secretariat in the area of children's right to housing and basic services.

3. Office of the United Nations High Commissioner for Refugees (UNHCR)

99. Pursuant to Commission resolution 2001/28 and following up on the inter-agency consultation held in November 2000, the Special Rapporteur initiated further dialogues with UNHCR, which recognized the need to advance the standard-setting work in the field of housing and other property rights from the conceptual level developed by General Comments No. 4 and No. 7 of the Committee on Economic, Social and Cultural Rights to the operational level, for the protection of such rights. The Special Rapporteur acknowledges the valuable work undertaken by UNHCR with regard to property restitution in the context of refugee return, which offers an entry point in further collaborating with UNHCR in his future work on forced eviction and on upholding the right to adequate housing, especially in the context of emergency and post-conflict situations.

4. United Nations Economic Commission for Europe (UN-ECE)

100. The Special Rapporteur acknowledges the valuable role the regional commissions play in promoting exchange of development experience and regional and subregional cooperation. All five regional commissions have work programmes related to human settlements with the corresponding intergovernmental bodies, and have played an important part in reviewing the progress of the implementation of the Habitat Agenda for Istanbul +5. The Special Rapporteur is grateful for the valuable advice and information received from the ECE secretariat during the preparation for his country mission to Romania, and looks forward to cooperating with other regional commissions in his future activities.

IV. CONCLUSIONS AND RECOMMENDATIONS

101. From the above stock-taking of analyses and recommendations, the Special Rapporteur would respectfully submit the following suggestions to and seek further guidance from the Commission:

(a) Given the positive impact the Special Rapporteur has had on the global review processes, the Commission may wish to encourage him to continue to draw attention to issues relevant to housing rights at the special session of the General Assembly on children and at the World Summit on Sustainable Development, and to request OHCHR and other concerned bodies to facilitate his participation in these conferences;

(b) Given the grave situation of discrimination with respect to housing that affects many people and communities, and given the relevance of the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination in this context, the Commission may wish to recommend that the Committee on the Elimination of Racial Discrimination consider adopting a general recommendation on housing and discrimination/segregation in accordance with articles 3 and 5 of the Convention;

(c) Responding to the urgent need to further understand and to formulate policy recommendations on the thematic issues highlighted in this report, the Special Rapporteur wishes to undertake further research on non-discriminatory access to housing, land and related services, in the context of the Durban follow-up and of the need to make globalization more inclusive. The Commission may wish to request OHCHR and other agencies to assist him in this regard, including through the organization of expert seminars;

(d) Given the conceptual and practical link between the mandate of the Special Rapporteur and the initiative by the Commission on the issue of women's equal rights to own property, land and housing and to inherit (resolution 2001/34), the Special Rapporteur wishes to contribute to this process, including by giving his next report to the Commission a thematic focus on this subject;

(e) Considering the need for more substantive dialogues with Governments and civil society at the regional and subregional levels, regional dialogues could be organized in cooperation with regional commissions and NGOs;

(f) The Commission may wish to welcome the establishment of the joint UN-Habitat/OHCHR housing rights programme and give further encouragement to its implementation, including by inviting States which are in the position to do so to provide financial support;

(g) Given the consistent interest that the General Assembly has shown in the subject since the International Year of Shelter for the Homeless in 1987 and during its twenty-fifth special session in June 2001 (Istanbul +5), the Special Rapporteur requests the Commission to make it possible for him to report annually both to the Commission and to the General Assembly.

Notes

[1] The Special Rapporteur would like to acknowledge in particular the valuable contributions and analysis provided by Liana Cisneros, Sabrina Karmali, Jayna Kothari, Michela Telatin and David Westendorff, who contributed working papers.

[2] A/CONF.147/18, paras. 1, 78, 107, 108, 114 and 115.

[3] A/CONF.191/IPC/L.4 dated 15 December 2000, submitted to the second session of the Preparatory Committee.

[4] A/CONF.191/11, para. 32 (i) (e).

[5] A/CONF.191/11, para. 12.

[6] Reports of these events are available on the Istanbul +5 web site (http://www.unhabitat.org/istanbul+5/parallel.htm).

[7] See also paras 1, 78, 107, 108, 114 and 115.

[8] Decision 2/1 of the Commission on Human Settlements acting as the preparatory committee for the special session of the General Assembly for an overall review and appraisal of the implementation of the outcome of the United Nations Conference on Human Settlements (Habitat II), contained in document A/S-25/2.

[9] These statements are available on the OHCHR web site (http://www.unhchr.ch/housing).

[10] Resolution S-25/2, annex.

[11] A/AC.256/CRP.6/Rev.3 (Part I) dated 7 June 2001.

[12] CRC/C/50, annex VIII.

[13] CRC/C/108, annex VIII. Also see section III.B.2 of this report.

[14] Principle No. 1 of the Declaration on the Rights of the Child of the League of Nations (the "Declaration of Geneva"), adopted in 1924, includes the right to adequate "material and spiritual living conditions for the achievement of a normal and harmonious development of the child".

[15] Principle 4. The Declaration was adopted by General Assembly resolution 1386 (XIV).

[16] See E/CN.4/2001/51, section I.A.

[17] Most recently Commission resolution 2001/34 on women's equal ownership of, access to and control over land and the equal rights to own property and to adequate housing, para. 5.

[18] E/CN.4/Sub.2/1996/10, para. 6.

[19] Statement of conclusions of the workshop for judges on the justiciability of economic, social and cultural rights under the Beijing Plan of Action of the Asia-Pacific Framework for Technical Cooperation, New Delhi, 17 and 18 November 2001, para. 22.

[20] The general comments/recommendations of all the treaty monitoring bodies have been compiled in document HRI/GEN/1, which is revised annually.

[21] E/CN.4/Sub.2/1995/12, paragraph 11.

[22] General Comment No. 4, para. 8, see also E/CN.4/2001/51, paras. 25 and 90.

[23] E/CN.4/2001/51, para. 54. The tool kit is available at http://www.hic-mena.org.

[24] See, in particular, Santosh Mehrotta, "The Rhetoric of International Development Targets and the Reality of Official Development Assistance," Innocenti Working Papers No. 85 (Florence: UNICEF, 2000), which finds an alarming gap between the rhetoric of poverty reduction, on the one hand, and the features of ODA, especially to basic services, on the other.

[25] See E/CN.4/2001/51, paras. 91-96.

[26] General Assembly resolution 55/2, para. 6.

[27] Ibid., para. 19.

[28] Article 28 of the Universal Declaration of Human Rights, which proclaims that everyone is entitled to a social and international order in which the rights and freedoms contained in the Declaration can be realized, and articles 2.1, 11, 15, 22 and 23 of ICESCR, which build upon the foundation for international cooperation in Articles 55 and 56 of the Charter of the United Nations, and the obligation for States parties to recognize the essential role of international cooperation and to reaffirm their commitment to take joint and separate action. Also see Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights, paras 29-34.

[29] See Limburg Principles, paras. 21-34 and Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, paras. 18-19.

[30] They include: article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination; General Recommendation XIX of the Committee on the Elimination of Racial Discrimination; Statement by the Committee on the Elimination of Racial Discrimination to the Second United Nations Conference on Human Settlements (Habitat II) (A/51/18, annex IV); article 14, paragraph 2, of the Convention on the Elimination of All Forms of Discrimination against Women; article 16, paragraph 1, of the Convention on the Rights of the Child; article 11, paragraph 1, of the International Covenant on Economic, Social and Cultural Rights; General Comments No. 4 and No. 7 of the Committee on Economic, Social and Cultural Rights; and paragraphs 27, 36 and 40 of the Habitat Agenda. These texts can be found on the OHCHR housing web page.

[31] See for example, the final report of the Special Rapporteur of the Sub-Commission on human rights and population transfer (E/CN.4/Sub.2/1997/23, para. 51): "The combined application of self-determination, equality and non-discrimination of any kind in the enjoyment of economic, social and cultural rights means that ... the pursuit of developmental goals which have the effect of transferring selected or targeted sectors of the population without their consent, or demographic manipulation by implanting settlers, would be a breach of economic self-determination and the equality of peoples within a State."

[32] E/CN.4/2001/51, paras. 57-61.

[33] See, for example, W. Goldsmith, "The metropolis and globalisation: the dialectics of racial discrimination, deregulation and urban form" in American Behavioural Scientist, vol. 41, No. 3, November/December 1997; Amitabha Kundu and Darshini Mahadevia, (eds.), Poverty and Vulnerablity in a Globalising Metropolis: Ahmedabad, (New Delhi, Manak, 2002); and "Globalization in the context of increased incidents of racism, racial discrimination and xenophobia: working paper submitted by J. Oloka-Onyango in accordance with Sub-Commission decision 1998/104" (E/CN.4/Sub.2/1999/8).

[34] See also the basic principles and guidelines on the right to reparation for victims of violations of international human rights and humanitarian law prepared by Theo van Boven, Special Rapporteur of the Sub-Commission (E/CN.4/1997/104, annex) and subsequently revised by Mr. Cherif Bassiouni, independent expert of the Commission (E/CN.4/2000/62, annex).

[35] In accordance with General Comment No. 18 of the Human Rights Committee on non-discrimination.

[36] See Sub-Commission resolution 1995/21 which points out that persons affected by HIV/AIDS suffer from discrimination in the areas of, among others, health care, employment, education, housing, social welfare and travel.

[37] In accordance with Commission resolutions 2000/13 and 2001/34. See also Human Rights Committee General Comment No. 28, paragraphs 25 and 26 of which call for equality with respect to custody and care of children, the dissolution of marriage and inheritance rights, and paragraph 19 of which refers to discrimination faced by women in the economic sphere; it states that "the capacity of women to own property, to enter into a contract or to exercise other civil rights may not be restricted on the basis of marital status or any other discriminatory ground".

[38] See General Recommendation No. 18 of the Committee on the Elimination of Discrimination against Women, wherein the Committee calls attention to disabled women because "they suffer from a double discrimination linked to their special living conditions", and also General Comment No. 7 of the Committee on Economic, Social and Cultural Rights, paragraph 10, wherein the Committee calls attention to the particular vulnerabilities faced by women when they are rendered homeless.

[39] In accordance with the provisions of article 20 of the Convention on the Rights of the Child.

[40] In accordance with General Recommendation XIX of the Committee on the Elimination of Racial Discrimination.

[41] See, in this respect, General Recommendation No. 24 of the Committee on the Elimination of Discrimination against Women and General Recommendation No. 28 of the Human Rights Committee.

[42] See, for example, the numerous concluding observations in 2001 by the Committee on Economic, Social and Cultural Rights, reviewed in section III.B of this report.

[43] E/CN.4/2001/51, paras. 56-61.

[44] Ibid., para. 62.

[45] Henri Smets, "Le droit à l'eau", mimeo, 2001, pp. 64-70; "The right to water as a human right", *Environment Policy and Law,* vol. 30, 2000, p. 248.

[46] See Ana Hardoy and Richard Schusterman, "New models of privatization of water and sanitation for the urban poor", *Environment and Urbanization*, vol. 12, No. 2, 2000, pp. 63-75.

[47] See, for example, the web site of the World Bank's Rapid Response Unit (http://rru.worldbank.org) which contains a useful list of papers and links on the impact of privatization.

[48] House of Commons Select Committee on the Environment, Seventh Report 1999-2000: Water Prices and the Environment, HC 597, 14 November 2000 (HOCSCE7), Introduction, para. 20. Available at http://www.parliament.the-stationery-office.co.uk. Quoted in Emanuele Lobina and David Hall, UK water privatisation - a briefing, Public Services International Research Unit, 2001. Available at http://www.psiru.org.

[49] Karin Jordan, "Bolivians drive out water privateers", Ottawa, Canadian Union of Public Employees, 2000. Available at http://www.cupe.ca.

[50] David Hall, Kate Bayliss and Emanuele Lobina, "Still fixated with privatisation: a critical review of the World Bank's water resources sector strategy". Paper prepared for the International Conference on Freshwater (Bonn, 3-7 December 2001), p. 9. Available at http://www.psiru.org.

[51] Available at http://www.psiru.org.

[52] For further examples and evidence, see David Hall, "Water in public hands", June 2001, available at http://www.psiru.org.

[53] Quoted in Brendan Martin, "Privatization of municipal services: potential, limitations and challenges for the social partners", ILO Working Paper No. 175, Geneva, ILO, 2001, p. 28.

[54] Quoted in David Hall, op. cit. at note 52, p. 18.

[55] These include Rosario, Argentina, Nagpur, India, Kati, Mali and Thies, Senegal.

[56] Guideline 12 states that: "Discrimination against women in relation to the rights recognized in the Covenant is understood in light of the standard of equality for women under the Convention on the Elimination of All Forms of Discrimination against Women. That standard requires the elimination of all forms of discrimination against women including gender discrimination arising out of social, cultural and other structural disadvantages."

[57] E/CN.4/2001/51, para. 90.

[58] Including from: AHURA Bhutan: Representative of Children Forum of Bhutanese Refugees, All-Pakistan Alliance of Katchi Abadis, Anti-Slavery International, Asian Coalition of Housing Rights, Association of Tenants of Monaco, Group of the Homeless in Nagai Park (Japan), "Miguel Agustín Pro" Human Rights Centre (Mexico), National Alliance for People's Movements (India), Palestinian Centre for Human Rights, Tibet Bureau for UN Affairs, Tibetan Centre for Human Rights and Democracy, Urban Poor Consortium (Indonesia), and World Organization against Torture (OMCT).

[59] E/CN.4/2001/51, paras. 81 and 82.

[60] To be included in the annual report of the Committee to the Economic and Social Council (E/2002/22) (in preparation).

[61] Concluding observations on Belgium and Finland, twenty-fourth session; Germany and Japan, twenty-sixth session.

[62] Concluding observations on Honduras, Venezuela and Bolivia, twenty-fifth session; Panama, Japan and Israel, twenty-sixth session.

[63] Concluding observations on Nepal and Japan, twenty-sixth session.

[64] Concluding observations on Senegal, the Syrian Arab Republic and Nepal, twenty-sixth session.

[65] Concluding observations on Morocco and Venezuela, twenty-fourth session; Bolivia and Honduras, twenty-fifth session; Germany, Nepal, Panama, Senegal, the Syrian Arab Republic and Ukraine, twenty-sixth session.

[66] See CRC/C/108, para. 544.

[67] CRC/C/108, annex VIII. See also section I.A.4 of this report.

[68] Concluding observations on Palau, twenty-sixth session.

[69] Concluding observations on United Republic of Tanzania, twenty-seventh session.

[70] Santosh Mehrotra, Jan Vandermoortele and Enrique Delamonica, Basic Services for All? Public Spending and the Social Dimensions of Poverty, Florence, UNICEF Innocenti Research Centre, 2000.

[71] Forthcoming in 2002.